

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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IN RE AN EMERGENCY COMPLAINT)
AGAINST NORTHERN INDIANA PUBLIC)
SERVICE COMPANY ("NIPSCO") BY)
THE COUNTY OF LAPORTE INDIANA)
AND THE CITY OF MICHIGAN CITY)
INDIANA RELATING TO THE PRACTICES)
AND ACTS AFFECTING OR RELATING)
TO THE SERVICE OF NIPSCO AS BEING)
UNSAFE, UNREASONABLE AND)
INSUFFICIENT PURSUANT TO IC 8-1-2-54,)
AND REQUEST FOR COMMISSION)
INVESTIGATION PURSUANT TO IC 8-1-2-58)
AND REQUEST FOR AN INTERIM STATUS)
QUO ORDER)

FILED

MAY 19 2003

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42194

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") made the following entry in this Cause:

On May 5, 2003, LaPorte County, United Steel Workers of America ("USWA"), Lake County Commission, Lake County Council and the City of Hammond, (jointly referred to as the "Moving Parties") jointly filed a *Motion to Reconsider Order Granting Continuance and/or Motion to Convert Evidentiary Hearing of May 7-9, 2003 Into Commission-Supervised Mediation and Request for Costs* ("Motion to Reconsider").¹ On May 9, 2003, Northern Indiana Public Service Company ("NIPSCO") filed a *Reply to the Motion to Reconsider* ("Reply"). On May 12, 2003, the Moving Parties filed a Response to NIPSCO's Reply.

In their Motion to Reconsider, the Moving Parties indicate that NIPSCO has not reached settlement with all of the parties to this proceeding, and that "[n]one of NIPSCO's proposals have departed in any meaningful way from their initial 'Operation Excellence' proposal." Motion to Reconsider at 3. The Moving Parties go on to indicate that the schedules of numerous witnesses and attorneys have been coordinated for months to accommodate the lengthy hearing in this matter that was scheduled for May 7-9, 2003. The USWA had five different witnesses who arranged work schedules and made hotel arrangements. LaPorte County had four witnesses, including the Chief Executive Officer of the LaPorte County Hospital who were scheduled to appear at the Evidentiary Hearing. Other witnesses, including Probation Officer Eyrick and Day Care Facility Manager Chubb, as well as an expert witness from Atlanta

¹ On May 5, 2003, the Presiding Officers granted a Request for Continuance that had been filed by NIPSCO in this Cause. The Evidentiary Hearing in this matter is currently scheduled for June 23- 24, 2003.

Georgia, also made special arrangements to be present at the Evidentiary Hearing. The Moving Parties conclude in their Motion to Reconsider that the Presiding Officers should reconsider the continuance granted in this matter, and order the parties to participate in mediation pursuant to 170 IAC 1-4-1.

In its Reply, NIPSCO presents a detailed overview of its view of the ongoing settlement discussions, and takes exception to the Moving Parties' contention that "[n]one of NIPSCO's proposals have departed in any meaningful way from their initial 'Operation Excellence' proposal. Reply at 4 (*quoting*, Paragraph 7 of the Motion to Reconsider). In addition, NIPSCO indicates that the Commission cannot order parties into mediation, which is voluntary under the Commission's rules. NIPSCO also states in its Reply, that a mediator cannot be a member or employee of the Commission. NIPSCO concludes that as the Commission's rules do not provide for mediation as proposed by the Moving Parties, their request for mediation must be denied. Reply at 5.

In their Response, the Moving Parties' recognize that while a mediator cannot be an employee of the Commission, the Commission can encourage the parties to undertake mediation in this matter consistent with the Commission's direction to the parties on January 28, 2003, to pursue settlement discussions. Response at 2.

1. **Review and Analysis of the Presiding Officers.** As the May 7-9, 2003, dates scheduled for the Evidentiary Hearing have passed, the only remaining issue in the Motion to Reconsider is the Moving Parties' request for mediation. However, based on our review of the filings made with the Commission between May 5-12, 2003, that indicate that scheduling this matter involves the coordination of the schedules of several witnesses and attorneys, the Presiding Officers would like some assurance, well ahead of the Evidentiary Hearing, that the June 23-24, 2003, dates scheduled for the Evidentiary Hearing do not present conflicts for any of the parties to this Cause.²

A. Review of Request for Mediation

170 IAC 1-4-1 *et. seq.*, sets forth the procedures for mediation of proceedings pending before the Commission. 170 IAC 1-4-1, defines meditation as "...an informal and nonadversarial process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties with the objective of helping the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute."³ The mediation process set forth in 170 IAC 1-4-1 *et. seq.*, is voluntary, and a mediating party that had previously agreed to mediation may withdraw at any time. *See*, 170 IAC 1-4-9. In addition, the mediator shall terminate mediation whenever the

² In addition to the scheduling issues presented in the current filings, the Presiding Administrative Law Judge also received a voice mail message regarding possible problems with an expert witness attending the Evidentiary Hearing if it remained scheduled for June 23-24 2003.

³ Pursuant to 170 IAC 1-4-4(3), a mediator may not be selected to mediate a proceeding if the mediator is employed by any of the parties or attorneys involved in the proceeding, *or is a member or an employee of the commission.* (Emphasis added).

mediator believes that continuation of the process would harm or prejudice one (1) or more of the parties; or (2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely. *Id.*

While the Commission would welcome the opportunity mediate this proceeding, based on our review of the provisions set forth in 170 IAC 1-4-1 *et. seq.*, it appears that the Commission is prohibited from doing so. While the Commission may not be permitted to formally mediate this cause, the Moving Parties are correct that the Commission can appropriately *encourage* all of the Parties to participate in mediation, and recognizes that mediation of the issues may be an appropriate means to address our clear directive to the parties, on January 28, 2003, to pursue settlement in this Cause.

In order for all of the Parties to effectively participate in mediation under 170 IAC 1-4-1 *et. seq.*, it appears that they must--at a minimum--do the following: (1) They must jointly agree to participate in mediation; (2) they must agree on the procedure necessary to jointly select and retain a mediator; (3) they must allow sufficient time for the mediator to become familiar with the issues; (4) they must agree to attempt to see the process through to its conclusion without individual participants withdrawing; (5) they must attempt to complete the entire process without having the mediator terminate mediation following a determination that the ability or willingness of any party to participate meaningfully is lacking or that a reasonable agreement is unlikely.

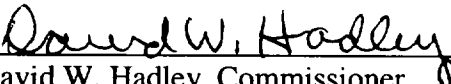
While conducting a successful mediation may necessitate the delay of the Evidentiary Hearing in this matter, the Commission is initially interested in determining the Parties' willingness to participate in mediation in an effort to resolve the issues in this Cause. The Presiding Officers recognize that this is a complex case with divergent interests in the outcome. The Parties undoubtedly have their own specific ideas of what does, and what does not, constitute an appropriate settlement. Accordingly, while the Presiding Officers are certainly prepared to hear this case in its entirety, we recognize that the issues presented in this Cause appear to be uniquely suited for resolution between all of the Parties.

B. *Mediation and Procedural Issues*

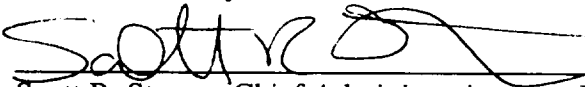
Consistent with the foregoing analysis, the Presiding Officers hereby find that the Parties should file a joint report ("Joint Status Report") with the Commission regarding the acceptability of mediation, and the acceptability of the current dates scheduled for the Evidentiary Hearing. The Joint Status Report should include a clear indication of the willingness of each party to participate in mediation, as set forth in 170 IAC 1-4-1 *et. seq.*, and an indication by each party regarding the acceptability of the current dates scheduled for the Evidentiary Hearing. The Joint Status Report should be filed with the Commission on or before June 6, 2003.⁴

⁴ If all Parties agree to mediation, the Joint Status Report should include a mediation schedule, and a proposed revised schedule for the Evidentiary Hearing in this matter. In the event that the Parties are unable to reach agreement on mediation, and a party has a conflict with dates currently scheduled for the Evidentiary Hearing, the Joint Status Report should include specific details regarding the reason(s) for the conflict, and a joint proposal for possible alternate dates for the Evidentiary Hearing. In the event that the Joint Status Report reflects the consensus of the Parties that this matter should simply go forward on June 23, 2003, the Evidentiary Hearing will proceed on that date.

IT IS SO ORDERED.



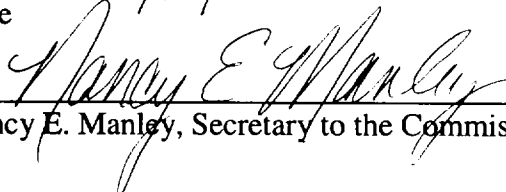
David W. Hadley, Commissioner



Scott R. Storms, Chief Administrative Law Judge



Date



Nancy E. Manley, Secretary to the Commission